

State of Wisconsin



2005 Senate Bill 402

Date of enactment:
Date of publication*:

2005 WISCONSIN ACT

AN ACT *to create* 895.046 of the statutes; **relating to:** actions against manufacturers, distributors, sellers, and promoters of products.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 895.046 of the statutes is created to read:

895.046 Remedies against manufacturers, distributors, sellers, and promoters of products. (1) DEFINITIONS. In this section:

(a) "Claimant" means a person seeking damages or other relief for injury or harm to a person or property caused by or arising from a product.

(b) "Relevant production period" means the time period during which the specific product that allegedly caused the claimant's injury or harm was manufactured, distributed, sold, or promoted.

(2) APPLICABILITY. This section applies to all actions in which a claimant alleges that the manufacturer, distributor, seller, or promoter of a product is liable for an injury or harm to a person or property, including actions based on allegations that the design, manufacture, distribution, sale, or promotion of, or instructions or warnings about, a product caused or contributed to a personal injury or harm to a person or property, a private nuisance, or a public nuisance, and to all related or independent claims, including unjust enrichment, restitution, or indemnification.

(3) REMEDY WITH SPECIFIC PRODUCT IDENTIFICATION. Except as provided in sub. (4), the manufacturer, distributor, seller, or promoter of a product may be held liable

in an action under sub. (2) only if the claimant proves, in addition to any other elements required to prove his or her claim, that the manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted the specific product alleged to have caused the claimant's injury or harm.

(4) REMEDY WITHOUT SPECIFIC PRODUCT IDENTIFICATION. Subject to sub. (5), if a claimant cannot meet the burden of proof under sub. (3), the manufacturer, distributor, seller, or promoter of a product may be held liable for an action under sub. (2) only if the claimant proves all of the following:

(a) That no other lawful process exists for the claimant to seek redress from another person for the injury or harm.

(b) That the claimant has suffered an injury or harm that can be caused only by a product chemically identical to the specific product that allegedly caused the claimant's injury or harm.

(c) That the manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted a product that meets all of the following criteria:

1. Is chemically identical to the specific product that allegedly caused the claimant's injury or harm.
2. Was manufactured, distributed, sold, or promoted in this state during the time period in which the specific

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

product that allegedly caused the claimant's injury or harm was manufactured, distributed, sold, or promoted.

(dm) That the action names, as defendants, those manufacturers of a product who collectively, during the relevant production period, manufactured at least 80 percent of all products sold in this state that are chemically identical to the specific product that allegedly caused the claimant's injury or harm.

(5) **LIMITATION ON LIABILITY.** No manufacturer, distributor, seller, or promoter of a product is liable under sub. (4) if more than 25 years have passed between the date that the manufacturer, distributor, seller, or promoter of a product last manufactured, distributed, sold, or promoted a product chemically identical to the specific prod-

uct that allegedly caused the claimant's injury and the date that the claimant's cause of action accrued.

(6) **APPORTIONMENT OF LIABILITY.** If more than one manufacturer, distributor, seller, or promoter of a product is found liable for the claimant's injury or harm under subs. (4) and (5), the court shall apportion liability among those manufacturers, distributors, sellers, and promoters, but that liability shall be several and not joint.

SECTION 2. Initial applicability.

(1) This act first applies to actions commenced on the effective date of this subsection.

SECTION 3. Effective date.

(1) This act takes effect on first day of the 2nd month beginning after publication.
